
(2006) 04 AP CK 0038
In the Andhra Pradesh High Court
Case No : C.R.P. No. 3006 of 2003

K. Rajam Raju and Others	Vs	APPELLANT
Smt. P. Rangamma and Others		RESPONDENT

Date of Decision : 20-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 23 Rule 3A, 151
Specific Relief Act, 1963 — Section 31

Citation : (2006) 4 ALD 61 : (2006) 3 ALT 505 : (2006) 2 APLJ 147

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : S. Srinivas Reddy, for the Appellant; U.S.R. Murthy, for the Respondent

Judgement

S. Ananda Reddy, J.—The defendants are the petitioners herein, and the revision petition is directed against the order of the Principal Senior Civil Judge, Ranga Reddy District in I.A.No. 1217 of 2001 in O.S. No. 430 of 2001, dated 16-4-2003 under which an application filed by the defendants to dismiss the suit as not maintainable was rejected.

2. It is stated that the respondents/plaintiffs filed the suit seeking the relief of cancellation of a compromise decree that was passed in an earlier suit between the parties i.e., O.S. No. 452 of 1991, on the ground of misrepresentation, fraud and coercion. It is stated that the said suit was filed for permanent injunction where during the pendency of the suit the plaintiffs therein have agreed to receive certain amounts from the defendants and a compromise was effected as per which the plaintiffs have given up their rights over the suit schedule property. Alleging that fraud, misrepresentation and coercion have been played in obtaining such compromise decree, the present suit is filed seeking cancellation of the said compromise decree date 3-7-1998 passed in O.S. No. 452 of 1991. The defendants in whose favour the compromise decree was passed filed the present application contending that a separate suit for cancellation of a decree

that was passed earlier could not be filed in terms of Order XXIII, Rule 3-A of the CPC.

3. The said petition was contested by the respondents/plaintiffs relying upon the judgment of the Calcutta High Court. The Court below relying upon the judgments relied upon by the respondents/plaintiffs and distinguishing the judgment of the Supreme Court in Banwari Lal Vs. Smt. Chando Devi (through L.R.) and another, rejected the application filed by the present petitioners. Aggrieved by that, the present revision is filed.

4. The learned Counsel for the petitioners contended that the Court below has committed grave error in not taking into account the amended provisions of the CPC, which prohibit the institution of a separate suit, though such remedy was available prior to the amendment made by the Amendment Act 104 of 1976. The learned Counsel contended that though the petitioners relied upon the judgments of the Supreme Court in Banwari Lal v. Chando Devi (1 supra), where the Apex Court had considered the relevant amended provisions and laid down the law that after the amendment, no separate suit is maintainable. But, however, the Court below erroneously distinguished the said judgment and relied upon the old judgments, which are rendered prior to the said amendments brought to the CPC. Therefore, the learned Counsel sought to set aside the order passed by the Court below and for allowing the application holding that the suit is not maintainable.

5. The learned Counsel for the respondents/ plaintiffs, on the other hand, sought to sustain the impugned order. It is contended by the learned Counsel that the suit is filed in terms of Section 31 of the Specific Relief Act seeking cancellation of the compromise decree that was passed in the earlier suit for which the remedy is only a separate suit and not an application as was contended by the petitioners. The learned Counsel reiterated and relied upon the judgments that are relied upon before the lower Court and sought to sustain the impugned order.

6. From the above rival contentions, the issue to be considered in this revision is whether a separate suit is maintainable seeking to set aside the compromise decree that was passed in an earlier suit?

7. Before proceeding to consider the rival contentions, it would be appropriate to refer to the relevant provisions of the Code of Civil Procedure. Order XXIII of the CPC deals with withdrawal and adjustment of suits. Rule 1 contemplates withdrawal of the suit or abandonment of even part of the claim either with reference to the subject or with reference to the defendants, for which the plaintiffs are obligated to file appropriate application on which an order has to be passed by the Court on being satisfied, and wherever the suit is abandoned or withdrawn, in terms of Sub-rule (3) of Rule 1, the party is entitled to institute a separate suit when such liberty was granted by the Court without reference to the period of limitation. But, if such a suit is abandoned or withdrawn without the leave of the Court, the party is precluded to institute a fresh suit on the same

cause of action with reference to the same subject matter. Rule 3 of the said Order deals with the compromise of the suit. Even with reference to the compromise also, satisfaction of the Court is required before passing the decree in terms of the compromise that is sought to be presented before the Court. It was made mandatory that the compromise petition or agreement has to be signed by the parties, which was not required prior to the Amendment Act 104 of 1976. The proviso was also added to Rule 3, where there is a dispute that the adjustment or satisfaction has been arrived at, Court shall decide the question without adjourning the matter unless it is necessary for the reasons to be recorded. An explanation was added to the said Rule 3 as per which an agreement or compromise which is void or voidable under the Indian Contract Act, 1872, shall not be deemed to be lawful within the meaning of this Rule. Therefore, major amendments were brought on statute so as to protect the interest of the parties to the compromise. Further, by the amendment Act new Rule 3-A was inserted and the same reads , -

Rule 3-A : Bar to suit- No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

From the above amended provisions of Order XXIII, it is clear that with reference to the compromise decree that was passed there is clear bar for institution of a fresh suit. In the light of the above, the petitioners/defendants filed the present application seeking to dismiss the suit on the ground that a separate suit for cancellation of a compromise decree that was passed earlier is not maintainable.

8. The counsel for the petitioners/ defendants relied upon the judgment of the Apex Court in *Banwari Lal v. Chando Devi* (1 supra). In that case also originally in a suit filed by the appellant a compromise decree was passed basing on a petition filed on behalf of the appellant, which was signed only by the counsel for the respondent, but not by the respondent. Thereafter, an application was filed seeking to set aside the said compromise decree alleging that the counsel of the appellant in collusion with defendant No. 2 in the said suit, had played fraud on the appellant by filing a fabricated petition of compromise although no compromise had been effected between him and the defendant, which was allowed by the learned Subordinate Judge and ordered restoration of the suit to its original number, against which a revision was filed before the High Court on behalf of the respondents. The learned single Judge allowed the revision, holding that as the appellant had voluntarily withdrawn the suit, there was no occasion to recall the said order treating it to be an order under Order XXIII, Rule 3 CPC, which was the subject matter in appeal before the Apex Court. The Apex Court referring to Order XXIII, Rule 3 CPC observed, "Rule 3 of Order 23, which contained the procedure regarding compromise of the suit was also amended to curtail vexatious and tiring litigation while challenging a compromise decree. Not only in Rule 3 some special requirements were introduced before a compromise is recorded by the Court including that the la (SIC) wful agreement or a compromise must be in writing and signed by the parties.... By adding the

proviso along with an explanation the purpose and the object of the amending Act appears to be to compel the party challenging the compromise to question the same before the Court which had recorded the compromise in question. That Court was enjoined to decide the controversy whether the parties have arrived at an adjustment in a lawful manner. The explanation made it clear that an agreement or a compromise which is void or voidable under the Indian Contract Act shall not be deemed to be lawful within the meaning of the said Rule. Having introduced the proviso along with the explanation in Rule 3 in order to avoid multiplicity of suits and prolonged litigation, a specific bar was prescribed by R.3-A in respect of institution of a separate suit for setting aside a decree on the basis of a compromise.

In view of the above, it is clear that after the Amendment Act 104 of 1976, as held by the Apex Court that only an application to set aside a compromise decree is maintainable before the same Court, which passed such an order or decree, but not a separate suit.

9. The learned Counsel for the respondent, however, relied upon a decision of the Calcutta High Court in *Gosto Behari Pramanik Vs. Sm. Malati Sen and Others*, . In that matter, there was a compromise decree in respect of two counter suits filed by the parties therein. Subsequently, one of the parties to the compromise decree has filed a suit for declaration contending that the compromise decree in the title suit, and the proceedings in the execution case being fraudulent and fictitious were neither binding nor enforceable against the plaintiff, and also sought for injunction restraining the Defendant No. 1 from executing the said decree. The said suit was dismissed against which an appeal was filed before the Additional District Judge, which was allowed on the ground that the District Munsif, who recorded the compromise decree had no pecuniary jurisdiction with reference to one of the suits, where compromise was recorded. Therefore, the appeal was allowed, which was assailed before the Calcutta High Court. The Calcutta High Court though allowed the revision petition setting aside the order of the Additional District Judge, but, however, held that though it did not fall for consideration directly, as, admittedly, the compromise decree was passed much before the Amendment Act 104 of 1976. But in para 12 of the said judgment it was observed,- "It is well known that the consent or compromise decree can only be set aside in separate suit or proceedings on the ground that the consent was obtained by fraud or coercion, and such consent or compromise decree resulted in serious and substantial injustice". In fact, the Calcutta High Court did not consider various provisions that were amended by the Amendment Act 104 of 1976 as well as Rule 3-A of Order XXIII where there is a specific bar as to the institution of the separate suit.

In *Mohan Bai v. Jai Kishan* a learned single Judge of Rajasthan High Court had an occasion to consider as to the maintainability of the application or a suit to assail the compromise decree. In that case, the mortgagor filed the suit for redemption where a decree of redemption was passed, which was assailed by the defendant.

During the pendency of the appeal, a compromise was entered into where the appellant/defendant did not sign the compromise petition, but was signed by the counsel. The said compromise decree was further assailed in the second appeal on the ground that the same is vitiated on the ground that the party did not sign the compromise petition, as is required under Order XXIII, Rule 3 CPC. Therefore, the said compromise decree is liable to be set aside. Simultaneously, she also filed an application before the first appellate authority u/s 151 seeking to set aside the compromise decree. The second appeal was dismissed holding that the counsel for the appellant/defendant had the power to sign the compromise petition and a compromise decree could be passed basing on such compromise petition, negating the claim of the appellant that such compromise is vitiated for not signing the petition by the party. While considering various contentions that are advanced, the learned single Judge of the Rajasthan High Court also observed that the application, which was pending before the First Appellate Court be disposed of on its own merits and further held in para 5:

The other aspect is that it is well settled that the Court is not competent either in review or under its inherent powers to set aside the compromise decree on the ground that the consent of the parties or any of them was obtained by fraud or that the compromise decree was obtained by misrepresentation. The consent decree is contract between the parties and suit for adjudging it void and/or setting aside a decree on the ground of its having been obtained through misrepresentation or fraud lies u/s 31 of the Specific Relief Act whereunder a person against whom a void or voidable instrument, which includes a decree, and which causes serious injury can file a suit in Civil Court to get it cancelled. The petitioner did not file any such suit.

While coming to the above conclusion, the learned single Judge also referred to the judgment of the Supreme Court in *Jamila Bai Abdul Kadar v. Shankarlal Gulabchana*. But the said judgment of the Supreme Court, which was relied upon, was rendered prior to the amendment of the CPC by the Amendment Act 104 of 1976. In fact, the learned single Judge of the Rajasthan High Court did not consider the proviso as well as the explanation contained in Rule 3 of Order XXIII as well as the bar contained in Rule 3-A of the said order. Therefore, the said judgment is no more good law, in the light of the decision of the Supreme Court in *Banwari Lal v. Chando Devi* (1 supra)

10. Under the above circumstances and in view of the law laid down by the Appellate (sic. Apex) Court in *Banwari Lal v. Chando Devi* (1 supra) and the specific provisions of the amendment Act 104 of 1976, no separate suit is maintainable and only an application would lie before the same Court, which passed the compromise decree, which has to consider the issues that are raised in such petition with reference to the compromise decree. Therefore, the present suit is not maintainable.

11. Therefore, the impugned order is set aside accordingly, and the application filed by the defendants is allowed, and the suit is dismissed as not maintainable.

12 The civil revision petition is accordingly allowed. No costs.